



Appropriation Law Course

Capt Armando Martinez
Operations Officer
Financial Management School



Overview



- Accountable Officials
- Sources of Appropriation Law
- Appropriations Available as to Purpose
- Appropriations Available as to Time
- Anti-Deficiency Act
 - Appropriations Available as to Amount
- Military Construction
- Expense vs. Investments
- Conduct of Preliminary Investigations
- Preventing ADA Violations





Accountable Officials



- Why are we here?
 - DoD Financial Management Regulation 7000.14-R
 - **Vol. 14, Ch. 2, Para. 020401.B.3**
 - MARADMIN 350/11
- Training at least every three years



Navigation bar of Windows Internet Explorer showing address bar, search bar, and various toolbars.

Address bar: <http://comptroller.defense.gov/fmr/>

Search bar: Google

Toolbars: Favorites, (1 unread...), DoD ... x, Home, RSS, Mail, Print, Page, Safety, Tools

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Accountability



All individuals with roles that include oversight, execution, or funds management must be cognizant

- Commanding Officers
- Comptrollers
- Contracting Officers
- Certifying Officials
- Authorizing Officials
- Approving Officials
- Disbursers
- Funds Managers
- Funds Holders/Program Managers
- Supply Officers
- Other Funds Control Personnel



Accountability



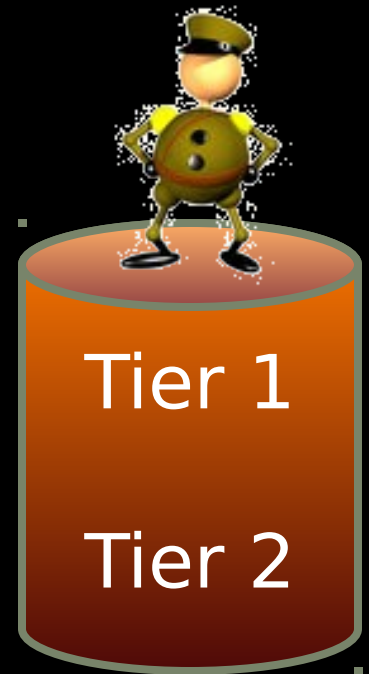
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Fund Control Personnel



- Tier 1
 - Issue Funding Allocations & Documents
 - Accept Funding Allocations & Documents
- Tier 2
 - Issue routine, small dollar documents
 - **Travel Orders**
 - **Requests for training or supplies**
 - **GCPC purchases**
 - CGs/COs require briefing



Importance of Appropriations Law



- Most violations occur while
 - Fulfilling operational requirements
 - Accomplishing the mission
- Battlefield Constraint
 - Affects the employment of forces
 - May not be waived/ignored in a Contingency Operation
- Failure to adhere may result in severe consequences
 - Administrative and criminal penalties may apply
 - Fines
 - Imprisonment



Importance of Appropriations Law



- Use critical thinking skills to mitigate risk
- As staff officers, it is our responsibility to
 - Identify resources available for funding requirements
 - Advise the Commander of the most fiscally responsible approach to resolving funding issues
 - **Support the operational need while not violating appropriations law, other regulations, or lawful orders**



U.S. Government



- Three Branches of Government
 - Legislative
 - **Makes Laws**
 - Executive
 - **Executes and Enforces Laws**
 - Judicial
 - **Interprets Laws**
- You work for the Executive Branch
 - In order to execute laws, they must first be established by Congress



Sources of Appropriation Law



- Constitution of the United States



The Power of the Purse



- Gives Congress the power to
 - Appropriate Funds
 - Prescribe the conditions governing the use of funds
- Article I, Section 8
 - “Pay the debts and provide for the common defense and general welfare of the United States.
- Article I, Section 9, Clause 7
 - “No money shall be drawn from the Treasury, but in Consequence of Appropriations made by law.”



The Power of the Purse



- Supreme Court Decisions
 - Reeside v. Walker (1850)
 - **“However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of anything not previously sanctioned.”**
 - **Only Congress has the authority to approve spending**
 - United States v. MacCollom (1976)
 - **“The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.”**
 - **Congress must appropriate funding for a particular purpose before financial transactions can be made**



Competing Philosophies



- Operational – Boldness, Initiative, Speed
- Institutional – Just do it, make it happen
- Procurement – Unless prohibited, you can do it
- Fiscal – Find the “yes” answer
- Appropriation Law – Do not do it unless you can find where it clearly states that you can
 - As well as, the art of reconciling all of the above



Appropriation Law Resources



- Comptroller General Decisions (Comp. Gen.)
 - Head of Government Accountability Office (GAO)
 - GAO performs audits and publishes decisions regarding government operations
 - GAO determines if government is following law
 - Congress may request GAO to change the interpretation
 - B-#####
- Department of Justice and Office of Legal Counsel
- Court Rulings are legally binding and set precedence

<http://gao.gov>



Guiding Principles - Regulations



- Regulations are not legislation, but they are rules that determine how the laws are implemented
 - Treasury Financial Manual
 - OMB Circulars
 - GAO Redbook
 - DoD Financial Management Regulation (DoD FMR)
 - DoN and USMC Guidance, Policy, and Procedures
 - **MCO P7300.21 Marine Corps Financial Execution Standard Operating Procedure Manual**



Lifecycle of an Appropriation



- The President's Budget is due the first Monday in February of each year (2 U.S.C. § 631)
- The President's Budget submitted to the Speaker of the House and President of the Senate
- Congress will have broad discretion over the budget submission
 - Approve or Increase/Decrease proposed funding levels
 - Eliminate Proposals
 - Add programs not requested by administration



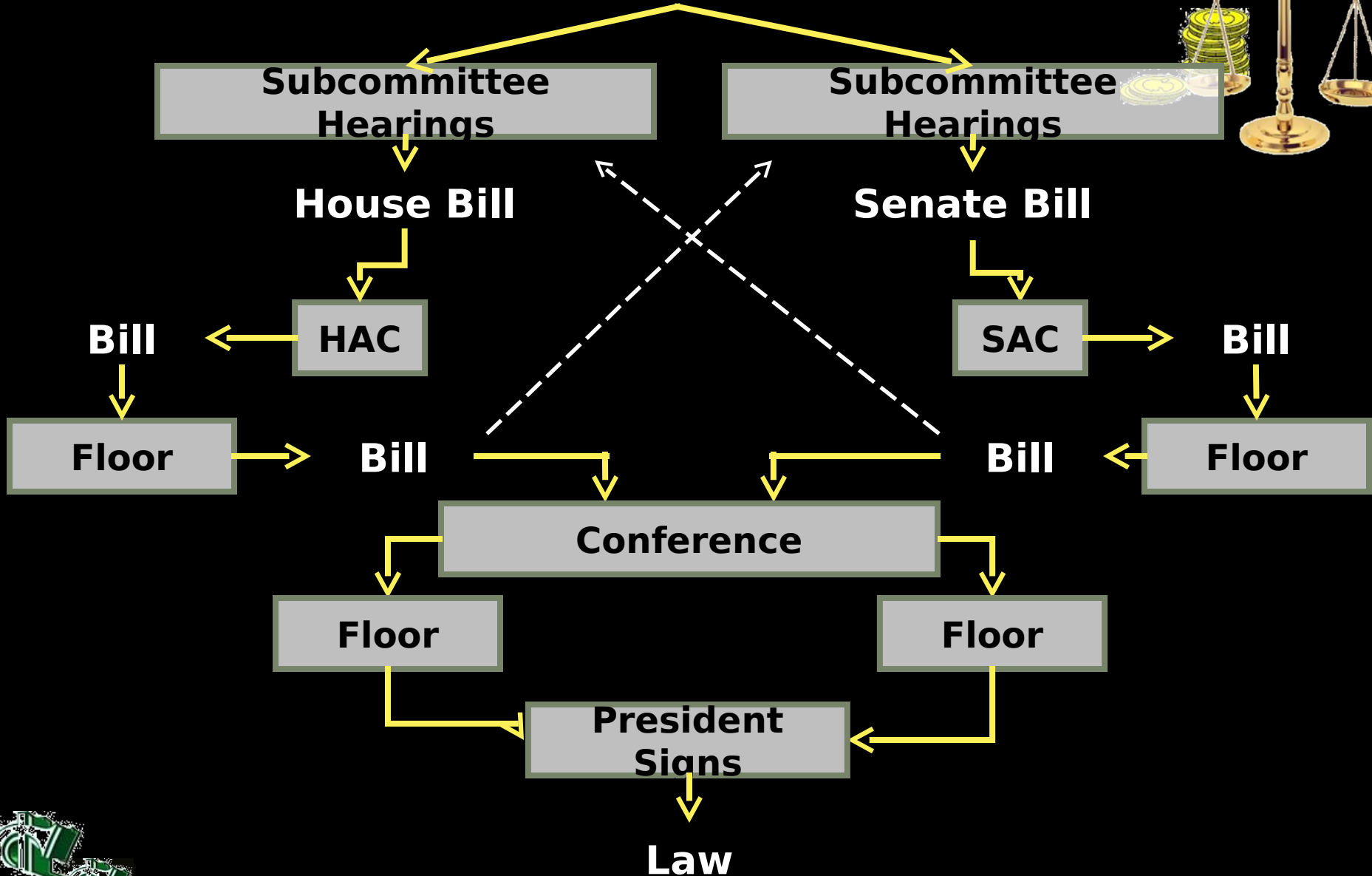
Lifecycle of an Appropriation



- Bill is referred to the appropriate Committee
 - House/Senate Armed Services Committee
 - House/Senate Appropriations Committee
- So what is the difference between the two types of committees and how does it affect me?
- House/Senate Armed Services Committee
 - Drafts legislation for program authorization
- House/Senate Appropriations Committee
 - Drafts legislation for appropriations (budget authority)



Proposed Legislation



Lifecycle of an Appropriation



- President may accept or veto the Bill
- Results in Authorization Act and Appropriations Act
 - Authorization Act – Authorizes Programs
 - Appropriation Act – Provides Budget Authority
 - **31 U.S.C. § 1511 (Definition of an Appropriation)**
- Authorization Act does not have to come first
 - Appropriation preceding an Authorization implies authorization (precedent)



Lifecycle of an Appropriation



- Office of Management and Budget (OMB) distributes

1 - Appropriationment
- **Congress**

- **OMB**

- **HQMC**

- **MARFOR/MCI-?**

- **MEF/MCB**

- -----
- Allotments

- ---- Sub-Allotments

2 - **DIV/SOI/MCAS**

2 - **Appropriation**

- **Appportionment**

- **Allocation**

- **Allotment**

- **Sub-Allotment**

- **Operational
Target**

- Informal Subdivisions (Allowances, Operational)



Transaction Lifecycle

- Commitment (CMT)
 - Administrative reservation of funds
- Obligation (OBL)
 - Legal binding agreement
- Expense (EXP)
 - Goods or services have been received
- Liquidation
 - Payment for goods or services



Shown with sample diamond settings.



Congressional Controls



- Early fiscal issues included
 - Spending in advance of an appropriation
 - Comingling funds
 - Using funds for other purposes
 - Obligating at a rate that would require supplementals
- Congresses answer: Anti-deficiency Act
 - Three elements to govern legal availability of funds
 - **Purpose (31 U.S.C § 1301(a))**
 - **Time (31 U.S.C § 1502(a))**
 - **Amount (31 U.S.C § 1341(a) and 31 U.S.C § 1517)**



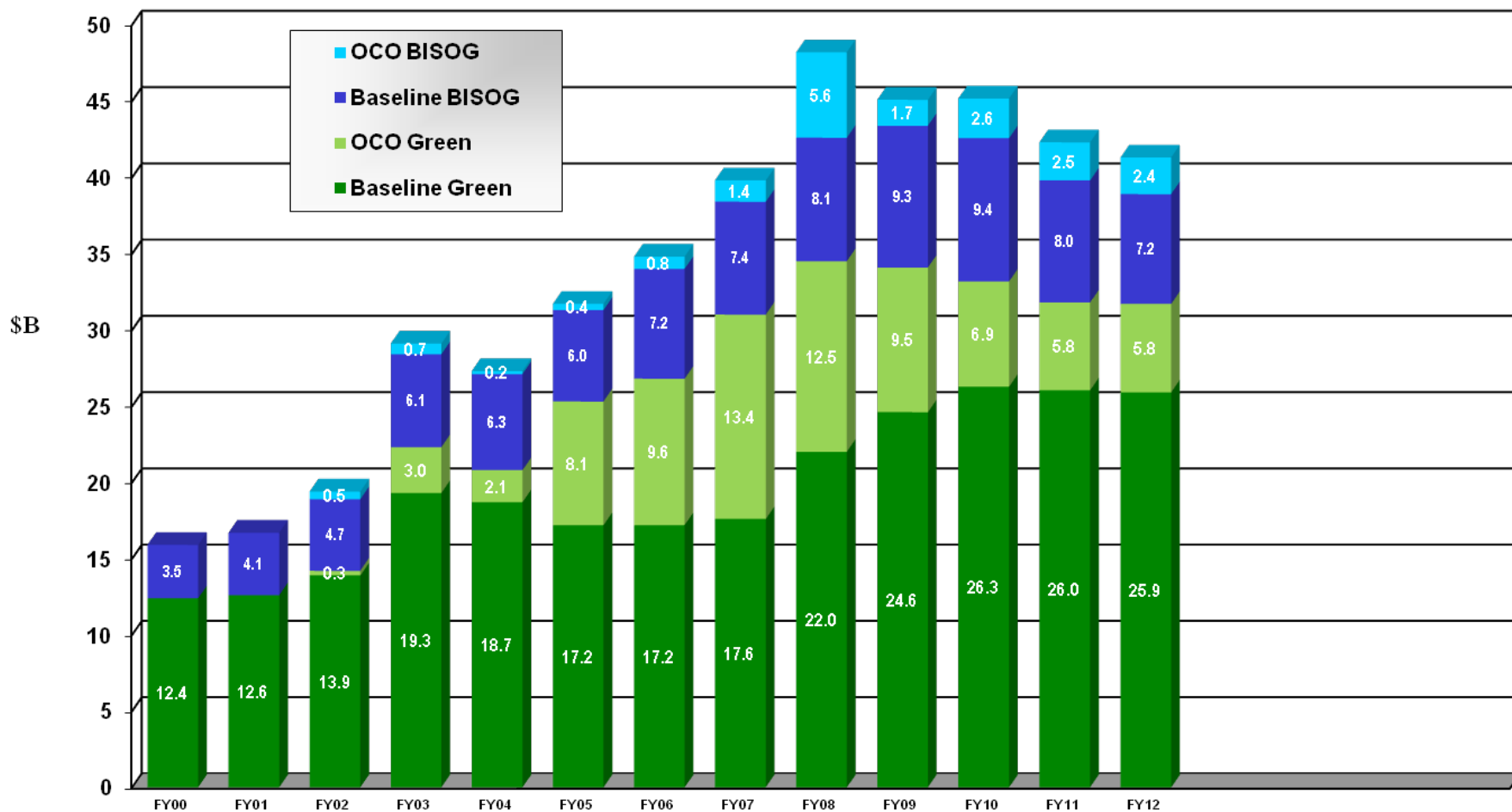
Federal Budget – 2011 Snapshot



- ~ 37% Discretionary Spending
- ~ 63% Mandatory Spending



USMC Budget – Historical



Appropriations Act Limitations



CASE STUDY





Purpose



**Should I buy
what is
behind door #
1, 2, or 3?**



Pick a Door, any door



Purpose

- Congress determines the purpose for which we receive budget authority



**You can only
buy what is
behind door
#2!**



Purpose



- 31 U.S.C. § 1301 (Referred to as the Purpose Statute)
 - “Appropriations shall be applied only to objects for which the appropriations were made except as otherwise provided by law.”
- In 1809: Brigadier General’s salary was \$225.00 per year
 - A General convinced the War Department to give him advances on his pay, which he used for investing.
 - In response, Congress passed the Purpose Statute.



Purpose



- A purchase is
 - “...permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of that function and if it is not otherwise prohibited by law.” (B-226065 (1987))
- Where a particular expenditure is not specifically provided for, it is permissible if it is
 - Necessary and incident to the proper execution of the general purpose of the appropriation.



Purpose



- Necessary Expense Test
 - Is it necessary? Does a requirement exist?
- B-286457 established the “three part rule”
 - Must bear a logical relationship to the appropriation and make a direct contribution to an agency function
 - Must not be prohibited by law or agency policy
 - Must not be otherwise provided for in another appropriation



Purpose



- An Appropriation Act is the first place to reference when determining an authorized purpose
 - DoD has over 100 Appropriations
 - Most Marine Corps organizations have one
- Appropriations differ by service and by purpose
 - Congress typically passes thirteen appropriation acts



Purpose - Appropriations



- Operations & Maintenance, Marine Corps (O&M,MC)
 - Used for day-to-day expenses such as training exercises, deployments, civilian salaries, equipment operating costs, consumable supplies, TDY travel, utilities, base services, and other operating expenses
- Operations & Maintenance, Marine Corps Reserve (O&M,MCR)
 - Used for day-to-day expenses such as equipment operating costs, consumable supplies, TDY costs in support of reserve training conferences, operation and maintenance of reserve training centers, and other operating expenses of the Reserves



Purpose - Appropriations



- Military Personnel, Marine Corps (MPMC/MILPERS)
 - Used for pay, allowances, individual clothing, subsistence, gratuities, and permanent change of station travel
- Reserve Personnel, Marine Corps (RPMC)
 - Used to pay for personnel costs for the reserves



Purpose - Appropriations



- Research, Development, Test and Evaluation (RDT&E)
 - Expenses necessary for
 - **Basic and applied scientific research, development, test and evaluation**
 - **Includes maintenance, rehabilitation, lease, and operation of facilities and equipment**
 - Funds operations and maintenance costs for organizations funded with RDT&E



Purpose - Appropriations



- Procurement, Marine Corps (PMC)
 - Construction, procurement, production, and modification of vehicles and major end-items
 - Communications and electronic equipment
 - Initial outfitting for newly fielded systems
 - Specialized equipment and training devices
- Procurement of Ammunition, Navy and Marine Corps (PANMC)
 - Construction, procurement, production, and modification of ammunition



Purpose - Appropriations



- Examples from FY12 DoD Appropriations Act
- Operation and Maintenance, Marine Corps:
 - “For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law, **\$5,542,937,000**”



Purpose - Appropriations



- Operation and Maintenance, Navy:
 - “For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; and not to exceed **\$14,804,000** can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes, **\$38,120,821,000**”



Purpose - Appropriations



- Operation and Maintenance, Defense-Wide:
 - For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law, **\$30,152,008,000**
 - *Provided, That not more than \$47,026,000* may be used for the Combatant Commander Initiative Fund authorized under section 166a of title 10, United States Code



Purpose - Appropriations



- Operation and Maintenance, Defense-Wide (cont.):
 - *Provided further, That not to exceed **\$36,000,000** can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes*
 - *Provided further, That of the funds provided under this heading, not less than **\$34,311,000** shall be made available for the Procurement Technical Assistance Cooperative Agreement Program, of which not less than **\$3,600,000** shall be available for centers defined in 10 U.S.C. 2411(1)(D)*



Purpose - Appropriations



- Operation and Maintenance, Defense-Wide (cont.):
 - *Provided further, That **none** of the funds appropriated or otherwise made available by this Act may be used to plan or implement the consolidation of a budget or appropriations liaison office of the Office of the Secretary of Defense, the office of the Secretary of a military department, or the service headquarters of one of the Armed Forces into a legislative affairs or legislative liaison office*



Purpose - Appropriations



- Operation and Maintenance, Defense-Wide (cont.):
 - *Provided further, That **\$8,420,000**, to remain available until expended, is available only for expenses relating to certain classified activities, and may be transferred as necessary by the Secretary of Defense to operation and maintenance appropriations or research, development, test and evaluation appropriations, to be merged with and to be available for the same time period as the appropriations to which transferred*



Purpose - Appropriations



- Operation and Maintenance, Defense-Wide (cont.):
 - *Provided further, That any ceiling on the investment item unit cost of items that may be purchased with operation and maintenance funds shall not apply to the funds described in the preceding proviso*
 - *Provided further, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.*





Purpose – Necessary Expense



- Part I: Agency Mission
 - The Marine Corps was born in 1775
 - Official mission was established by the National Security Act of 1947, amended in 1952
 - **Marines are trained, organized, and equipped for offensive amphibious employment as a “force in readiness,”**
 - 10 U.S.C § 5063 further identifies the mission
 - **Include providing combined arms forces and for service with the [Naval] fleet in the seizure or defense of advanced Naval Bases.**



Purpose – Necessary Expense



- Agency Mission Example
 - If your unit wanted to purchase Hesco barriers to establish a perimeter in a forward operating base, would that constitute a logical relationship to the agency mission?
- Agency Mission Example
 - Yes, it supports the defense of an advanced Naval Base



Purpose – Necessary Expense



- Part II: Not prohibited by law
 - If the requirement supports the agency mission, research the sources of appropriation law to determine if it is prohibited



Purpose – Necessary Expense



- Not Prohibited by Law Example

- Could a M... for the
installation... water pipelines
to support... course with its
O&M Fund



- Not Prohibited by Law Example

- No, because it is specifically prohibited by law
in 10 U.S.C § 2941a concerning the use of
appropriated funds to equip, operate or
maintain a golf course
 - B-277905 (1998)



Purpose – Necessary Expense



- Part III: Not otherwise provided for
 - Has it been budget for, or typically made available from another appropriation?
- Generic v. Specific Appropriation
 - Reasonably be related to a general appropriation,
 - But is it directly within the scope of a more specific appropriation?
- Exception – When Congress authorizes, in law, a particular expenditure from a particular appropriation



Purpose – Necessary Expense



- Similar Appropriations
 - Which one does the agency choose?
 - **Is one more specific than the other?**
 - **If not, the agency may choose whichever one you deem most appropriate**
 - Once the agency picks, they “must” stick to that appropriation for all related requirements in the future! (Pick n’ Stick)
 - **Binding decision, B-306424**
 - Congress may sign into law a particular appropriation that directs that particular expenditure
 - **Overrules the previous “pick n’ stick” decision**



Purpose - Reprogramming



- Reprogramming
 - Shifting funds from one object within an appropriation to another object within the same appropriation
 - From an operational unit to an installation's base support
 - Thresholds published in the DoD FMR, Vol. 3, Ch. 6
- Below Threshold Reprogramming (BTR)
 - Does not require Congressional Approval
 - For O&M,MC, FY11 threshold was \$15M
 - Based on cumulative amounts
 - Amounts above BTR requires Congressional notification



Purpose – Transfer Authority



- Movement of funds from one appropriation to another
 - DoD FMR, Vol. 3, Ch. 3
- Requires statutory transfer authority
 - Identified in Appropriations Acts
 - Requires Secretary of Defense (SecDef) approval
 - Approval is delegated to Office of Under Secretary of Defense (OUSD), Deputy Comptroller, Program/Budget
- General Transfer Authority
 - **Approval by OMB and Congressional notification**





Purpose – Classify Acquisition



- Expenses are costs incurred to operate and maintain the organization
 - Supplies
 - Fuel
 - Maintenance
 - Repair
 - Facilities sustainment
 - O&M, MC funded restoration and Modernization projects
 - Utilities
 - Temporary Duty Travel (TDY)
- (DoD FMR, Vol. 2A, Ch. 1, Para. 010201.D.2)



Purpose – Classify Acquisition



- Investments are costs that result in
 - Acquisition of, or modification to, end items
 - Benefits for future periods
 - Long-term character
 - **Real property**
 - **Personal Property**
- Construction
 - Production of complete and useable facility
 - Improvement to an existing facility
 - Includes all the expense and investment items necessary to erect a complete and usable facility



Purpose – Food



- Most of the rules related to the availability of appropriated funds for food is found in Comp. Gen. decisions and DoD regulations
- The basic rule is that appropriated funds are not available to pay for food at duty stations
- Free food normally cannot be justified as a necessary expense
 - Considered personal expenses, B-249795 (1993)
 - Linked to entertainment, B-163764 (1968)



Purpose – Food



- Formal Meetings and Conferences Exception
 - Government Employees Training Act, 5 U.S.C. § 4110
 - **May pay for expenses of attendance at meetings concerned with functions for which the appropriation is made**
 - **Must materially contribute to the improvement of that function**
 - Meals must be incident to the conference
 - Attendance must be necessary for full participation
 - Conference includes
 - **Functions taking place when meal is served, and**
 - **Includes substantial functions taking place separately**



Purpose – Food



- Formal conference or meeting is defined as
 - Having sufficient formality
 - **Registration**
 - **Published agenda**
 - **Schedule speakers**
 - Involves topical matters of interest to multiple agencies and/or nongovernmental participants
- Does not include internal government conferences
 - ALNAV 072/11
 - MCO 7300.22A



Purpose – Food



- Conference Fees
 - Reimbursement even if food is included
 - Must be no additional or separate cost
- Cultural Awareness Programs
 - Authorized to provide small “samples” of ethnic foods
 - **B-199387 and B-301184**
- Travel
 - Authorized to fund meals while in a travel status
 - **5 U.S.C. § 5702**



Purpose – Food



- Appropriated funds may be used to purchase
 - Refrigerators
 - Microwaves
 - Commercial coffee makers
- Must be located in a central kitchen or common area
- Food storage and preparation relates to the efficiency of agency activities
 - B-302993, B-276601, B-210433



Purpose – Food



- Appropriated funds are available for the purchase of food if
 - Employee's duties require extended hours, and
 - An “extremely emergent situation involving danger to human life and the destruction of Federal property” exists
- “Dangerous conditions” are not enough to warrant a food purchase
 - B-185159



Purpose – Food



- Official Representation Funds (ORF) is available
 - When extending official courtesies
 - Only for distinguished visitors who are ORF-eligible
- ORF is a subset of Emergency and Extraordinary Expense (EEE)
 - “And not to exceed **\$14,804,000** can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes” FY11 DoD Appropriations Act (O&M,N)



Purpose – Bottled Water



- Bottled Water
 - Does not contribute to mission accomplishment
 - Personal Expense
- Exceptions
 - Public Water is unpotable
 - Emergency failure of the water source on an installation
 - No water within reasonable distance, B-310502
 - No water available without cost or at a lower cost



Purpose – Awards



- Awards for Service Members, SECNAVINST 3490.4A
 - “Award medals, trophies, badges, and similar devices”
 - Excellence in accomplishments or competitions
 - **10 U.S.C § 1125**
 - Must develop an awards program
 - **One-time bases**
 - **Unique achievement**
 - **Clearly contributes to increased effectiveness**
 - Requires direct link between the award and purpose of the appropriation
- Example: Legal Opinion WRT NCO Handbooks



Purpose – Awards



- Cash awards and Expenses for honorary recognition
 - 5 U.S.C. § 4503 for civilian employees
 - 10 U.S.C. § 1124 for service members
- MCO 7042.6C: Award of Trophies and Similar Devices in Recognition of Significant Accomplishments
 - Specifically prohibits cash awards for recognition of individual accomplishments
 - Applies for active duty, reserve, and civilian Marines
 - SECNAVINST 3590.4A



Purpose – Awards



- MCO 1650.17F
 - Marine Corps Incentive Awards Program
 - Suggestions, inventions and scientific achievements, to produce improvements in operations
- ORF is available
 - When extending official courtesies
 - Only for distinguished visitors who are ORF-eligible
 - The current threshold is \$350



Purpose - Entertainment



- Entertaining
 - Generally does not materially contribute to an agency's mission
 - Considered personal expense
- Exception
 - ORF
 - **Ratios must be met**



Purpose - Decorations



- Authorized as long as they are
 - Modestly priced and consistent with work-related objectives
 - **B-217869**
- Not authorized for personal convenience
 - Christmas cards and holiday greetings letter



Purpose – Business Cards



- GAO has sanctioned the purchase of business cards for agency employees
 - Regularly deal with outside organizations
 - **B-280759**
- Military departments
 - Only recruiters and criminal investigators can procure commercially
 - All others purchase card stock and use in-house printing



Purpose – Wearing Apparel



- Wearing Apparel is authorized if
 - Necessary to accomplish the government's objectives
 - Government gets principal benefit
 - If gov't provides the apparel, they own the item
 - Scenarios for which the Department may purchase
 - Item is special, government benefit, and hazardous duty
 - Uniform, if required by law or agency regulation
 - Occupational safety and health
- (Flame retardant suits, safety boots, goggles, etc.)



Purpose - EEE



- Appropriated funds with broad discretion
 - 10 U.S.C § 127
 - SECNAV INST 7042.12E
 - Separate item in the O&M,N appropriation
 - Does not need to satisfy normal purpose rules
- Must be specifically granted for EEE purposes
 - B-231627
- Have strict regulatory controls within an Agency
 - Limited availability
 - Potential for abuse



Purpose - EEE



- Official Representation Funds (ORF)
 - Extend official courtesies to authorized guests
 - **Dignitaries and Foreign officials**
 - **Senior U.S., State and Local Government officials**
 - **Distinguished and Prominent citizens**
 - Although it is a relatively small amount, it receives its fair share of scrutiny
 - **Susceptible to fraud, waste, and abuse**
 - **Extension of Commander's influence in the AOR**
- Regulations
 - **DoD FMR, Vol. 10, Ch. 12, Para. 120322.B**
 - **DoD Directive 7250.13**
 - **SECNAVINST 7042.7K**



Purpose - EEE



- Criminal Investigation Activities
 - Unusual expenditures during criminal investigations
 - Unusual expenditures for crime prevention
- Intelligence Activities
 - Unusual expenditures during intelligence investigations





Purpose - Scenarios



- You work for U.S. Marine Corps Forces, Pacific
- An acquaintance from PACFLT calls with a question: Yes, APFs can be used for steel toed boots. A Supply Officer with U.S. 7th Fleet wants to purchase 5 U.S.C § 7903 specifically authorizes the purchase of special clothing to protect personnel from the hazards of their duties
- Is this an acceptable purchase?



Purpose - Scenarios



- You work for Marine Corps Base, Camp Pendleton

- No, APFs for Food and Drinks ...

Buying food generally does not materially contribute to an agency's mission and is considered a personal expense

Not an all inclusive rental expense

Not a formal meeting and not civilians

Light refreshment exception no longer allowed

B-288266



Purpose - Scenarios



- You work for 2d MAW
- The Staff Secretary calls with a question...
 - The command recently used O&M funds to buy patriotic and motivational decorations (pictures of historical Marine Corps Aircraft) for the headquarters building; some members said it

Yes You Can Use APFs

GAO allows if they are modestly priced and consistent with work-related objective rather than for personal convenience



Purpose - Scenarios



- Generally, Cannot Use APFs to Purchase
- You work for the MEF
- MEF Protocol Officer calls with a question...

- for *excellence in accomplishment or competition*

Arguably a quarterly award winner meets the criteria for “excellence in accomplishment”

However, giving coins to family members of deployed persons would not be proper.

But, could purchase the coins with personal funds





Summary

- Accountability
- Sources of Appropriation Law
- Appropriations available as to Purpose

